

# DESERTION

## DISCUSSED.

*In a Letter to a Country Gentleman.*

S I R,

**I** Don't wonder to find a Person of your Sense and Integrity so much surpris'd at the Report of the Throne's being declared Vacant, by the lower House of the Convention: For how (say you) can the Seat of the Government be Empty, while the King, who all grant had an unquestionable Title, is still Living, and his Absence forc'd and involuntary? I thought our Laws, as well as our Religion, had been against the Deposing Doctrine; therefore I desire you would expound this Seate Riddle to me, and give me the Ground of this late extraordinary Revolution. In answer to your Question, you may please to take notice, That those Gentlemen of the Convention, and the rest of their Sentiments, who declare a Vacancy in the Government, lay the main stress of their Opinion upon his Majesties withdrawing himself: For now, especially since the Story of the French League, and the Business of the Prince of Wales, are pass'd over in Silence, most Men believe that the pretended Breach of that which they call *The Original Contract* was designed for no more than a popular Flourish.

And that you may be not beschock'd by seeing the Votes of so considerable and public Meetings debated by a private hand, give me leave to remind you, That a Parliament, and a Convention, are two very different Things: The latter, for want of the King's Writs and Concurrence, having no share in the Legislative Power. If it's urged, That the present Posture and Ex-

gence of Affairs, is a sufficient Dispensation with the usual Preliminaries and Forms of Parliament. To this I am oblig'd to answer, That this pretended Necessity is either of their own Making, or of their own Submitting to, which is the same thing; and therefore ought not to be pleaded in justification of their Proceedings. For if his Majesty had either not been driven out of his Dominions, or invited back upon honorable Terms, they needed not to have had recourse to these singular Methods. And since they have neither the Authority of Law, or Necessity, to support their Determinations, I hope they will not think themselves disoblige'd, if they are inquired into; and some part of that Liberty which they have taken with his Majesty be returned upon themselves. For all private and unauthorized Opinions are to be regarded no farther than they prove their point. Like Plate without the Royal Impression, they ought not to be obtruded for current Coin; nor rated any higher than the intrinsic Value of the Metall. Let us examine therefore, if his Majesty has done any thing which imports, either in it self, or by necessary consequence, That he has voluntarily Resigned his Crown, and Discharged his Subjects of their Allegiance. Now the Author of *The Enquiry into the present State of Affairs*, &c. for whose Judgment the Commons seem to have a very great Regard, as appears from their concurrence with him: For their most considerable Votes are, in a

manner, transcribed from his 11th. Paragraph. This Author tells us, Pag. 5. *That when a King withdraws himself, and his Seals, without naming any Persons to represent him, the Government is certainly laid down and forsaken by him.* Though afterwards he is so good natured as to add, *That if any imminent present Danger, or just Fear, (though indeed a King can never be decently suspected of that; I suppose his Reason is, because Kings are invulnerable) had driven his Majesty away, it might seem a little too hard to urge this too much.*

In order to the confuting this Notion, I shall prove in the

First place, That his Majesty, before his withdrawing, had sufficient Grounds to make him apprehensive of Danger, and therefore It cannot be called an *Abdication*.

Secondly, That the leaving any Representatives behind him was impracticable at this juncture.

Thirdly, That we have no Grounds, either from the Laws of the Realm, or those of Nature, to pronounce the Throne void, upon such a Retreat of a King.

But before I do this, its not improper to observe, That this pretence of a Demise, if it signified any thing, cannot affect *Scotland* or *Ireland*: Not the first, For there his Majesty's Commissioners acted in the usual Manner, till they were disturbed: Nor the second, For that Kingdom continues still under the Regular Administration of the Lord Lieutenant. Neither is it sufficient to say, That *Ireland* is an Appendage to the Crown of *England*; and therefore it must follow its Revolution. For allowing a Demise was really consequent upon a Failure of Seals and Representatives; yet there would be no colour to apply it to a Case where there was no such Omission. For no Forfeiture ought to be stretched beyond the Reason upon which it is grounded. But this only by the way. I shall proceed to prove the first thing propounded, viz. That his Majesty, before his withdrawing, had sufficient Grounds to make him apprehensive of imminent Danger.

We are now fallen upon Times in which the most extravagant and almost impossible Things are swallowed without Chewing, and the plainest Truths outfaced and denied; as if Evidence was an Argument against Proof, and Absurdities the only Motives of Credibility: So that now, if ever, we seem fit for Transubstantiation. Had not some Men believed this true, in a great Measure, they would never have disputed against matter of Fact, which was done almost in the Face of the whole Kingdom. To speak to the present Case; Had not his Majesty great Reason to retire, to secure his Person and his Honor, at his first withdrawing from *Whitehall*? which is the time from which our Author dates his pretended Desertion (for he will not allow him to be King at his return) I say, had not his Majesty great Reason to retire when he had met with so many unfortunate Disappointments, with so many surprising and unparallel'd Accidents? When part of the Army was revolted, and the Remainder too apparently unserviceable? When the People had such fatal and unremovable Prejudices against his Majesty's Service? When there were such terrible Disorders in the Kingdom, and all Places were either Flaming or ready to take Fire? What should a Prince do, when he had scarce any thing left him to lose but himself, but consult his Safety, and give way to the irresistible Evil? But our Author pretends the King's Affairs had a much better Aspect; Let us observe how he proves it. Why he tells us, *That when the Prince of Orange's Proposals came to his Majesty, the Army and the Fleet were left in his Hands.* They were so, that he might pay them for the Prince's Service; for they owed his Majesty's Authority scarce any other way than by receiving his Money, and eating up his Meat. (It's to be hoped they have since repented of their Action.) But the Enquirer goes on with his Inventory of *Fortes and Revenues*, which the King was to have still. He may know, if he pleases, that we have but Four considerable Ports in the Kingdom. Now *Hull* and *Plimouth* had already disposed of themselves, and the Tower of *London* was demanded

demanded for the City; so that there was none but *Portsmouth* remaining. And as for the *Revenues*, it's to be feared, the Northern Collections would have been almost as Slender as those in the West. And now one would think our Father began to relent: For he owns, *That some Things, which the Prince of Orange proposed, may be called hard; viz. his demanding that the Laws against Papists which were in Employment might be executed.* But the Enquirer is much mistaken, if he thinks the Prince of Orange insisted upon no more than the bare Execution of the Law in this point. For the Disbanding of all Papists (which was part of his Proposals) is much more than what the Law requires; by which the Papists are only excluded from Offices of Command, and Trust. But neither the Test-Acts, nor any others bar the King from Listing them as common Souldiers. And lastly, to deliver up his best Magazine, and the Strength of his Capital City; To be obliged to pay a Foreign Army, which came over to enable his Subjects to drive him out of his Dominions, were very extraordinary Demands, and looked as if there was a Design to reduce him as low in his Honor, as in his Fortune. To forgive a Man who endeavoured to Ruin me, is great Christian Charity; but to Article away my Estate to him, because he has Injured me, is such a Mortification as no Religion obliges us to. This is in effect to Betray our Innocence, and Sign away the Justice of our Cause; and own that we have deserved all that hard Usage which has been put upon us; so that it's easy to imagine what an unconquerable Aversion the Spirit of Princes must needs have to such an Unnatural Penance. In short, when the Forts and Revenue were thus disposed of; when the Papists were to be Disbanded, and the Protestants could not be trusted; when the Nation was under such general, and violent Dissatisfactions; when the King, in case of a Rupture, (which was not unlikely) had nothing upon the Matter but his single Person to oppose against the Prince's Arms, and those of his own Subjects;

when his Mortal Enemies; and those were under the highest Forfeitures to his Majesty, were to sit Judges of his Crown and Dignity, if no farther; when Affairs were in this Tempestuous Condition, To say that a Free and Indifferent Parliament might be Chosen, with relation to the King's Right, as well as the Peoples; and that His Majesty had no just visible Cause to apprehend himself in Danger, is to out-face the Sun, and to trample upon the Understandings, and almost upon the Senses of the whole Nation.

2. It's not improper to examine what doughty Reasons the Enquirer advances to prove, the King's coming from *Feverham* to *White-hall* to be no return to his People. The reason of his affirming this is apparent; He is sensible what singular usage his Majesty met with, and therefore he would fain unking Him, that it might be better suit with his Character. But, pray, what had the King done to incur a Forfeiture by his First Retirement? Had he quitted the Realm? If that was material, it cannot be alleadged, for his Majesty was no farther off than the Coast of *Kent*. Did he refuse to take Care of his People any longer, when the Lords went down to Visit him to *White-hall*? No: If he had, he would not have come back when he was at his Liberty. His return, after some Assurances of fair Treatment, is a plain discovery of the Motives of his withdrawing; and that he came up with an intention to Govern. For, I believe, few People imagine that his Majesty would take such a Journey, only to have *Dutch* Guards clapt upon him; to be hurried out of his Palace, and carried Prisoner down the *Thames* at Noon Day. But the *Seals* never appeared. What time was there for them in 24 Hours? Besides there was an Order of Council with his Majesty at the Head of it, for suppressing the *Mobile*, Dated *Decemb. 18.* which was the next Day after his Majesty's return. And when he was sent back to *Rocheſter*, he might plainly perceive his Government was at an End for the present. For the Tower was Garrison'd by Foreign Forces:

Forces : The Lords published an Order by their own Authority, to oblige the Papists to depart the Town : The City made an Address to the Prince of Orange, which was a Virtual Acknowledgment of his Power ; and Associations came up to that purpose out of the Country ; (*Cambridge-shire Address*) not to omit that his Majesty was denied a small Sum of his own Gold to Heal with ; As if they had rather poor People should Perish with Boyles and Ulcers, than shew common Justice and Humanity to their King, From all these remarkable Circumstances, his Majesty might easily guess how they intended to dispose of him : For no Man in his Senses, who has treated a Prince so Contemptuously in his own Kingdom, will ever permit him either Power, or Liberty, for fear he should remember his former Usage. From what has been said, it's most evident, that his Majesty had all imaginable reason to provide for his own Security in some other Country.

And since his Majesty had sufficient reasons to withdraw, there can be no pretence for an Abdication. For we are to observe, that to Abdicate an Office, always supposes the Consent of him whom Quits it. That this is the signification of the Word *Abdico*, appears from *Tully, Salust, and Livy* ; to which I shall only add the Learned *Grotius, De jure Belli, &c. Lib. 2. Cap. 4. Sect. 9.* Where he makes Abdicating the Government, and plainly Giving it up, to be Terms of the same importance.

And to prevent unreasonable Cavils, he adds, that a Neglect, or Omission in the Administration of Government, is by no means to be interpreted a Renunciation of it. We have but two Instances with us which looks like an Abdication since the Conquest ; which are in the Reign of *Edward II.* and *Richard II.* both which were unjustly Deposed by their Subjects. However they did not renounce their Allegiance, and declare the Throne void, till they had a formal Resignation under the Hands of both those unfortunate Princes. And hence

it appears how unlucky our Enquirer is at citing the Laws. For *Page 12.* He tells us, *That since these Two Princes have been judged in Parliament for their Male Administration, and since these Judgments have never been vacated by any subsequent Parliaments ; these Proceedings are parts of our Laws.* From hence I observe,

1. That our Author contradicts himself. For here he owns that Male Administration is sufficient to warrant Deposition, and Resistance. But in his Enquiry into the Measures of Submission, &c. (For both these Papers are generally supposed to come from the same Hand) *Page 5. Par. 14.* He is much kinder to the Crown ; for there he assents, *That it is not Lawful to resist the King upon any pretence of ill Administration, and that nothing less than subverting the Fundamentals of Government will justify an Opposition.* Now I am much mistaken, if Deposing of Kings is not Resisting them with a Witness. But besides his self Contradiction ; the case is not to his purpose. For,

1. These Parliaments were called in Tumultuous times, when the Subjects were so hardy as to put their Kings under Confinement. Now if it is against the Constitution of Parliaments to Menace the Two Houses out of their liberty of Voting freely, then certainly Kings ought not to be overawed by Armies, and Prisons ; These Parliaments therefore are very improper to make Precedents of.

2. These Princes were wrought upon so far, as to resign their Crowns ; which each of them did, though unwillingly. Let this Enquirer produce such a Resignation from His Majesty, and he says something.

3. He is much mistaken in saying *these judgments*, as he calls them, *have not been vacated by subsequent Parliaments.* For all those subsequent Parliaments, which declare it Unlawful to take up Arms against the King, do by necessary implication condemn these Deposing Precedents ; for it's impossible for Subjects to Depose their Princes without Resisting them.

2. By ACT of Parliament the First of Edw. 4. yet remaining at large upon the Parliament Rolls, and for the greater part recited *verbatim* in the Pleadings in *Ba-ger's Case*, in the Year Books (*Trin. Term. 9. Edw. 4.*) The Title of Edw. 4. by De- scent, and Inheritance, and is set forth very particularly; And that upon the Decease of Rich. 2. the Crown by Law, Custom, and Conscience, Descended and Belonged to Ed- mund, Earl of March, under whom King Edw. 4. claimed.

It is likewise further declared, That Hen. 4. against Law, Conscience, and Custom of the Realm of England, Usurped upon the Crown and Lordship thereof, and Hen. 5. and Hen. 6. occupied the said Realm by Unright- eous Ingression, and Usurpation, and no other- wise.

And in 39. Hen. 6. Rot. Parl. when Ri- chard Plantagenet, Duke of York, laid claim to the Crown, as belonging to him by right of Succession it was,

1. Objected in behalf of Hen. 6. that Hen. 4. took the Crown upon him as next Heir in Blood to Hen. 3. not as Conqueror.

To this it was Answered, That the pre- tense of Right as next Heir to Hen. 3. was false, and only made use of as a Cloak to shadow the violent Usurpations of Hen. 4.

2. It was Objected against the Duke of York, That the Crown was by ACT of Par- liament Entailed upon Hen. 4. and the Heirs of his Body, from whom King Hen. 6. did Lineally Descend. The which Act (say they, as it is in the Record) *is of Authority to defeat any manner of Title.* To which the Duke of York Answered, That if King Hen. 4. might have obtained, and enjoyed the Crown of England and France by Title of Inheritance, Descent, or Succession, he neither needed, nor would have desired, or made them to be granted to him in such wise, as they be by the said Act, the which takes no Place, nor is of any Force or Effect against him that is right In- heritor of the said Crown; as it accordeth with Gods Laws, and all Natural Laws, which Claim and Answer of the Duke of York, is expressly acknowledged and recog- nized; by this Parliament, to be Good, True,

Just, Lawful and Sufficient. Cotton's Abridg- ment. Fol. 685, 666.

From these Recognitions it plainly fol- lows,

1. That the Succession cannot be inter- rupted by an ACT of Parliament, especially when the Royal Assent is given by a King *De Facto*, and not *De Jure*.

2. The ACT 9. of Edw. 4. by declaring the Crown to Descend upon Edmund, Earl of March, by the Decease of Rich. 2. does evidently imply, That the said Richard was rightful King, during his Life, and conse- quently that his Deposition was Null, and Unlawful.

If it's demanded, Why his Majesty did not leave Seals and Commissioners to supply his Absence? This Question brings me to the Second Point, viz. to shew,

That the leaving sufficient Representa- tives was impracticable at this Juncture. For

1. When the Nation was so much em- broiled, and the King's Interest reduced to such an unfortunate Ebb; it would have been very difficult, if not impossible, to have found Persons who would have undertaken such a dangerous Charge. That Man must have had a Resolution of an extraordinary Size who would venture upon Representing a Prince who had been so much disrespected in his own Person; whose Authority had been set aside, and his Ambassador clapt up at Windsor, when he carried not only an inoffensive, but an obliging Letter. But granting such a Representation had been engaged in; the Commissions must either have extended to the Calling of Parliaments, or not; if not, they would neither have been satisfactory, nor absolutely necessary. Not Satisfactory, For the want of a Parlia- ment was that which was accounted the great Grievance of the Nation, as appears from the Prince of Orange's Declaration, Where he says expressly, *That his Expedition is intended for no other Design but to have a Free and Lawful Parliament assembled, as soon as is possible.* Declar. R. 12.

Secondly, This Expedient was not abso- lutely Necessary; for the Administration of Justice might have proceeded Regularly, without

without any such Deputation, by Virtue of those Commissions which the Judges and Justices of the Peace had already from the King. This I shall prove.

1. From a parallel Instance; King Charles the I. took a Journey into *Scotland* in 41, during the Session of Parliament at *Westminster*; where, though he appointed Five Lords to sign Bills in his Name, (The Continuation of *Bak. Chron.*) yet the Judges and Justices acted by Virtue of their former Commissions, without any new Authority from any Representatives of his Majesty. Now *Scotland* is as much a distinct Kingdom from *England*, as *France*; and *France* as much his Majesty's Dominions as *Scotland*: And therefore if Commissions will hold in the King's Absence in one Place, why not in the other?

Secondly, The present Judges met in *January* last at *Westminster*, to dispatch some Business in order to keep the Term but were forbidden to proceed by the Prince of *Orange's* Secretary: So that it is plain, it was the Opinion of these Reverend Judges that their Commissions from his Majesty were still in Force. But in the next place,

If his Majesty had deputed any Persons to Represent him in Parliament, this Method would have been attended with new and insuperable Difficulties. For,

1. If they had been Limited they would not have given Satisfaction: For it being impossible to foresee the Business and Votes of a Parliament at a distance; If they had been restrained to certain Points, in all probability they would have wanted Power to have passed all the Bills, and so their Deputation would not have Answered the Desire of the Houses, and the greatest part of their Grievances might have been counted unredressed. If it's said that the Parliament might have requested an Enlargement of their Commission from his Majesty. To this I Answer, That the Convention may send to his Majesty for an Expedient now if they please. And, I hope, they will; for I hear his Majesty has been so gracious as to send to them. But,

2. If these Commissioners were unlimited,

it would be in their Power to do a great many things prejudicial to the Crown; In such a Case they might alter the Monarchy into a Commonwealth, or Sign the Deposing of his Majesty, if such Bills should happen to be offered. And though there may be many Persons of Honor, and Conscience enough, to lodge such a Trust with: Yet in regard his Majesty has been lately mistaken in some, of whose Fidelity he had so great an Assurance; he has small encouragement to be over-confiding for the Future. Indeed no Wise Prince will Trust so vast a Concern, as a Kingdom, with the Honesty of another, especially when many of his Subjects are Dissaffected, and in a Ferment. So that nothing can be more unreasonable than to expect such Plenipotentiary and Absolute Commissioners.

3. I shall prove in the last place, That we have no Grounds, either from the Laws of the Realm, or from those of Nature, to pronounce the Throne void, upon such a Retreat of a Prince as we have before us.

1. To begin with the Laws of the Realm, which are either Acts of Parliament, or those we call Common Laws. Now there is no Statute, so much as pretended, to support this Deserting Doctrine; and if there was, it's certain no such can be produced. Indeed a Prince must be very weary of Governing, and void of the common Inclinations of Mankind; who would Sign a Bill of this Nature, and give his Subjects such a dangerous Advantage against Himself and his Posterity.

Neither has this Opinion any better Countenance from Common Law: For Common Law is nothing but Antient Usage, and Immemorial Custom. Now Custom supposes Precedents and Parallel Cases: But it's granted of all Hands, That the Crown of *England* was never judged to be Demised, by the withdrawing of the Prince before now. And therefore it follows, by undeniable Consequence, that this Opinion can have no Foundation in the Common Law, because there is not so much as one Ruled Case to prove it by. Nay, our Laws are not only silent in the maintenance of

of this Paradox, but against it, as I shall make good by Two Precedents.

1. From the Case of *Edward* the Fourth, who having not sufficient Force to Encounter the Earl of *Warick*, who had raised an Army for King *Henry*, was obliged to fly the Kingdom; but that he deputed any Persons to Represent him, our Histories don't give us the least Intimation: Neither was it Objected at his return, that he had Abdicated the Government, by omitting to Constitute a Regent. Neither is it material to Object, that all Disputes of this Nature were over-ruled by his Victorious Army; For if it had been the known Law of this Realm, that a Prince had *ipso facto* forfeited his Crown by going beyond Sea, without leaving a Deputation, though his Departure should happen to be Involuntary: If this, I say, had been the Law of the Kingdom, it would not only have been a great Advantage to *Henry* the Sixth, and made the Nation ring of it, ( of which there is *alium Silentium*;) but we may be well assured, King *Edward* would not have confer'd Honor, worn the Crown, and taken the State and Authority of a King upon him, till he had been reestablished by Parliaments. But that he did Exercise all Acts of Sovereignty before the calling of a Parliament, appears from *Daniell*, *Steu*, and *Baker*. And when the Parliament was Convened, those who had taken up Arms against him were found Guilty of Treason, and his Adherents were restored to Blood and Estate (*Daniell*.) But there was no Confirmation, or Resisting of his Title, which is a Demonstration there was no need of it; and that this Abdicating Doctrine was perfectly unknown to that Age.

2. To come nearer our own Times, what Seals, or Commissioners did *Charles* the Second leave behind him after *Worcester* Fight? And yet, I believe, no Mortal ever urged this as an Argument against his Restoration. If it be Answered, that there was much more Danger in this case, than in that before us. To this I reply, that if we Examine the Matter more narrowly, we shall find the disparity very inconsi-

derable. For was there not a numerous Army of Foreigners and Subjects in the Field, against his present Majesty at his retiring? What Power or Authority, or so much as Liberty was there left him? And I am afraid that at that time he had fewer Friends to stand by him, than his Brother after that unfortunate Battle in '51.

And since this pretended Dereliction has no manner of Protection from the Constitution, it has no other Refuge but the Laws of Nature to fly to; but a very little Storming will serve to drive it from this last Retrenchment.

For the Law of Nature is nothing but the Reason of the Thing. Now impartial Reason has always a regard to the Circumstances of Action, and makes Allowances for Surprise, for Straintness of Time, for Resentment upon extraordinary Provocation; and never takes Advantage of an Omission, which may be fairly Interpreted, from any, or all, of these Causes. I mention this, not that the present Case needs any such Allowance, but to show that the Law of Nature would Admit it, if Occasion required. 'Tis true, written Laws, either through the ambiguity of the Words, or the defectiveness of the Sense, are often abused by ill Men, and wrested contrary to the Design of the Legislators: But the Law of Nature is not tyed up to the Alphabet, nor bound to determine by the Imperfections of former Ages. Therefore this Principle will give the Enquirer no *just Advantages* against his Majesty; for Equity has no Quirks in it, nor ever lyes at Catch. Reason is always just and generous, it never makes Misfortune an Accusation, nor judges in favour of Violence. Indeed, what can be more Unrighteous ( though the Case was private and inferior ) than that any one should Suffer for being Injured, and be barred his Right for the Faults of others? If a Man should forfeit his House to those who set it on Fire, only because he quitted it without giving some formal Directions to the Servants; and be obliged to lose his Estate, for endeavouring to preserve his Life. I believe.

believe it would be thought an incomprehensible sort of Justice. If to proceed in this manner be not to establish Wickedness by a Law, I have done. If Princes may be thus roughly treated, their Birth is a Misfortune to them; and, we may say, they are Crown'd rather for Sacrifice than Empire. At this rate, the People must e'en Govern themselves, for the Throne will be a Place of too much Danger to sit on any longer. We have an Excellent Church, and we do well to take due Care to continue its Establishment; but to dispossess our Prince, upon this Score, has as little Divinity as Law in it. To endeavour to preserve our Religion by such Methods will make it more Fatal to us in the event than Atheism it self. 'Tis a mistake to think the World was made for none but Protestants; and if Dominion was founded in Grace, I am afraid our share would not be great in the Division.

If it is Objected, That his Majesty's not sending to his People, upon his Removal, is an Argument that he intended to govern them no longer. To this I Answer,

1. That I am pretty well assured, That

no Man, who makes this Objection, believes the truth of it; and therefore I might safely leave it to his own Conscience to confute him.

Secondly, His Majesty was scarcely Landed in France before the Administration was conferred upon the Prince of Orange, which Action might very well discourage his Majesty from sending any Messages to soon as he intended: But since it's known, his Majesty has sent Letters (if not to the Privy Council, as some affirm, yet) to the Convention.

Thirdly, Those who were the Occasion of his Majesty's Departure should (one would think) have waited on him, and invited him back. For without Question the injuring Person ought to make the first step towards an Accommodation, especially when Wrong is done to his own Prince. Now whether his Majesty has been well used in this Revolution, or not, I leave the World to judge now; but God will do it afterwards.

Thus (SIR) I have ventured to give you my Thoughts upon this Subject, and am

Affectionately yours,

E N I S.